IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

First Appeal No. 905 of 1986.

Date of Decision: 11.3.2004

NEW INDIA ASSURANCE CO.LTD.

Versus

HARIBHAI KALURAM CHAUHAN

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for r

For the Appellant : Mr. Rajni H. Mehta.
For the Respondent No. 1 : MRS USHA C GANDHI
DELETED for Respondent No. 2
NOTICE SERVED for Respondent No. 3-4

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

This appeal is directed against the award of the Motor Accident Claims Tribunal (A) Panchmahals at Godhra

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Whether reporters of Local Papers may be allowed to see the Judgment?

in Motor Accident Claim Petition No. 9 of 1983 dated 5.9.1995.

The accident took place on 29.11.1985 at about 2.00 a.m. near Godhra Dahod Highway when Truck No. CPF 9590 carrying iron scrap to Indore turned turtle causing injuries to Mohamad Rafik Haji Mohamad. Mohamad Rafik died in this accident while Haribhai sustained injuries. Haribhai (Hariram) is one of the two drivers in the truck. The facts suggest that he handed over the vehicle to Yakubkhan nearby Godhra at 1.30 a.m. when Yakubkhan had driven the vehicle for about 10 kms. on Godhra-Dahod Road, the accident took place due to rash and negligent driving, having lost control of steering wheel. The co-owner of the truck, Mohamad Rafik, sleeping in the truck, fell down and sustained injuries and died. The truck was insured with the New India Assurance Co. Ltd., Indore. Driver Yakubkhan has been deleted. The Insurance Company filed written statement. It does not admit the claim. It is not admitted that the deceased was 30 year old. Income has been disputed. Yakubkhan was not employed as a driver. He was not holding valid driving license at the time of accident. Therefore, there is breach of condition providing for holding driving license for driving the vehicle. It is denied that he driver lost control of the vehicle and caused accident though it is admitted that the deceased died on the spot.

This claim petition is at the instance of Haribhai, driver of the vehicle. He states that he was earning Rs.600.00 p.m. towards salary and in addition, Rs.15.00 out side duty allowance with the truck. He was employed driver of the said truck and Yakubkhan was the second driver. The owner of the truck namely Mohamad Rafik was also travelling in the said truck. Haribhai handed over the vehicle to Yakubkhan and Yakubkhan started driving the truck after getting up from sleep and without washing his face. After covering about 10 kms. from Godhra, accident took place. The owner of the truck Mohmad Rafik sustained serious injuries and died on the spot. The claimant also received serious injuries. He was hospitalized, treatment followed and ultimately claimed compensation. The claims tribunal framed issues on the pleadings of the parties. After considering the evidence

on record and hearing the parties, award for Rs.1,28,500.00 carrying interest at the rate of 6 per cent p.a. from the date of the application till the date of actual payment has been made by the claims tribunal.

Through this appeal, award has been challenged by M/s. NEW INDIA ASSURANCE CO.LTD. Learned counsel for the appellant heard. The respondents are not present though served. Shri Mehta, learned counsel for the appellant submits that the claims tribunal has erred in holding the appellant responsible for payment of compensation when it is proved that Yakubkhan did not possess valid licence to drive the vehicle.He was not a driver but a cleaner in possession of learner's licence. It is also contended that the driver did not fell within the definition of third party, in case the conclusion is that he was employed as a driver. Reference is made to decision in NEW INDIA ASSURANCE CO. VERSUS MANDAR MADHAV TAMBE AND OTHERS [1996 ACJ 253] and contended that a person holding learner's licence would not be covered by the insurance policy. Another decision is PUSHPABAI PARSHOTTAM UDESHI AND OTHERS V. M/S. RANJIT GINNING AND PRESSING CO. PVT. LTD. [AIR 1977 SC 1735, para 20]. We are not convinced by these submissions. From the statement of Shaukatali, it is clear that he had engaged two drivers namely Haribhai and Yakubkhan. He does not say that Yakubkhan possessed driving license. This is the version of Haribhai. Therefore, the owner Shaukatali cannot be held responsible for engaging a driver who did not possessed license for driving the vehicle. This allegation has to be proved by the Insurance Company, which alleges this fact, by leading positive evidence, otherwise, there is no presumption that the owner knew Yakubkhan being in possession of the learner's licence at the time of engagement or at the time of driving the vehicle in question. The apex court has ruled in NATIONAL INSURANCE CO. LTD. VERSUS SWARAN SINGH AND OTHERS [2004 AIR SCW 663] that mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. The words 'duly licensed' used in sub section (2) of section 149 cannot be given meaning of 'effective licence' used in S.3. The owner should consciously allow the driver not in possession of license to drive the vehicle to enable the insurance company to avoid liability and that it has to be found on facts brought on record that the accident has been caused solely because of the non possession of valid license and not because there are other causes for accident, the insurer will not be allowed to avoid its liability who

may allege for technical breach of conditions concerning driving license. The contention that a person holding learner's licence is not entitled to drive the vehicle would run counter to the provisions of section 149(2) of the Motor Vehicles Act, 1988. Further question for consideration is submission whether the statement of Hariram in First Information Report that Yakubkhan was cleaner and did not possess licence to drive the truck should be accepted in evidence or not. First of all, evidence in criminal case is not acceptable/admissible in proceedings under the Motor Vehicles Act. Assuming that this is brought before the Tribunal, it has to be proved in accordance with law meaning thereby, relevance thereof has to be established, contents thereof are to be proved by confronting maker to the same.

In this case, the owner of the truck stated that he had engaged two drivers. Haribhai also stated that he was senior driver in the vehicle and he handed over truck to another driver Yakubkhan. Therefore, it is proved beyond doubt that Yakubkhan was driver in the vehicle, as such, covered by the policy of insurance which has been placed on record. The contention that the driver of the vehicle is not a third party has not been taken in the written statement nor pleaded before the claims tribunal. Therefore, it cannot be allowed to be raised for the first time before this Court. However, the driver is covered by the policy of insurance. While the vehicle was handed over to Yakubkhan by Haribhai, the owner of the truck Rafik was sleeping. Even otherwise, the allegation that the driver did not possess valid driving licence is to be proved by the Insurance company. It failed to do so. The contention that it should be proved by the claimant is thoroughly unsustainable, therefore, rejected. No other point was urged.

Result, therefore, is that there is no merit in this appeal and the same is rejected with no order as to costs.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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